



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1995

Mr. Charles F. Berger
Assistant City Attorney
Office of the City Attorney
200 West Abram Street
Box 231
Arlington, Texas 76004-0231

OR95-1364

Dear Mr. Berger:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37095.

The City of Arlington (the "city") has received a request for the documents comprising an Arlington Police Department Internal Affairs investigation of a police officer. You have made available to the requestor most of the requested information but contend that some of the requested information is exempt from required public disclosure under sections 552.101 and 552.107(1) of the Government Code. You have submitted the information you claim is exempted to this office for our review.

We first address your claim that section 552.101 in conjunction with article 4413(29cc), V.T.C.S., exempts from required public disclosure information relevant to two polygraph examinations.¹ V.T.C.S. article 4413(29cc), section 19A provides in pertinent part:

(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

¹Section 552.101 exempts from required public disclosure information that is confidential by law, either constitutional, statutory, or by judicial decision.

Subsection (d), which specifies persons to whom information acquired from a polygraph examination may be disclosed, is not applicable to this request. Accordingly, the city must withhold the polygraph examinations and any information acquired from the examinations under section 552.101 of the Government Code in conjunction with V.T.C.S. article 4413(29cc), section 19A(b).

We next address your contention that section 552.107(1) excepts from required public disclosure certain communications between the internal affairs investigator and the Arlington Police Department's Legal Advisor. Specifically, you seek to redact a portion of the Investigative Notes reflecting a conversation between the investigator and the legal advisor and to withhold the legal advisor's notes to the internal affairs investigator.

Information may be withheld under section 552.107(1) only to the extent that it documents confidences of a governmental representative to its attorney or reveals the attorney's legal advice and opinions. Open Records Decision Nos. 589 (1991), 574 (1990). Moreover, section 552.107(1) does not protect purely factual information. *Id.*; Open Records Decision No. 462 (1987) at 9-11. We agree that the investigator's entry in the Investigative Notes reveals the legal advisor's legal advice and opinions and, accordingly, that information may be withheld. However, only portions of the legal advisor's notes to the internal affairs investigator reveal his legal advice or opinions. We have marked the information that you have submitted that may be withheld under section 552.107(1). The remainder of those notes must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/KPB/ch

Ref.: ID# 37095

Enclosures: Marked documents

cc: Mr. John T. Chidgey
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(w/o enclosures)